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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

IN RE: COLLEGE ATHLETE NIL  
LITIGATION

Civil Action No.: 4:20-CV-03919-CW

**DECLARATION OF ANDREW  
ZIMBALIST REGARDING THE  
SETTLEMENT IN *HOUSE ET AL. V.  
NCAA ET AL.***

**JANUARY 30, 2025**

Hon. Claudia Wilken

**DECLARATION OF ANDREW ZIMBALIST REGARDING THE SETTLEMENT IN  
*HOUSE ET AL. V. NCAA ET AL.*  
JANUARY 30, 2025**

I. Introduction

My name is Andrew Zimbalist. I am the Robert A. Woods Professor Emeritus of Economics at Smith College in Northampton, Massachusetts. I received my B.A. in Economics from the University of Wisconsin-Madison in 1969 and my M.A. and Ph.D. in Economics from Harvard University in 1972 and 1974, respectively. I have served as a visiting professor at Doshisha University in Kyoto, Japan, the University of Geneva in Geneva, Switzerland, and Hamburg University in Hamburg, Germany. I have studied and consulted extensively within the intercollegiate and professional sports industry for leagues, teams, players' associations, governments, citizen groups, and athletes for over thirty-three years. I have published twenty-eight books and dozens of articles in the fields of sports economics, comparative economic systems and development economics. Among my books are five on the economics of college sports, including one entitled *Equal Play: Title IX and Social Change*. I am a founding member and serve on the editorial board of the *Journal of Sports Economics*. I have served as an expert witness and consultant in several dozen sports industry cases and given testimony in over twenty-five cases.

II. Opinions

I have been asked to opine on the following in this matter: 1) the aggregate damage calculations that would have made up the gross settlement distribution had Title IX been appropriately considered, and 2) whether the damages labeled BNIL are actual Name, Image, and Likeness damages. While many elements of the damages model and results presented by Dr. Daniel Rascher in *House* are presented with proper methodology and rigorous reasoning, the conclusions reached suffer from two fatal conceptual flaws. The first and most basic flaw is that Dr. Rascher's declaration misconstrues what constitutes an antitrust damage.

An antitrust damage occurs when an illegal restraint of trade precludes a benefit

1 accruing to a plaintiff that otherwise would have accrued absent the illegal restraint. Stated  
 2 differently, in the but-for world where no restraint took place, the plaintiff would have  
 3 received more compensation than he or she did in practice. The difference between these  
 4 two levels of compensation constitutes antitrust damages.

5 With regard to the two largest elements in Dr. Rascher's damages estimate  
 6 (broadcast NIL or BNIL, and athletic services compensation) the plaintiffs would not have  
 7 received any remuneration even absent any restrictive practices by the NCAA, other than an  
 8 equitable distribution of revenue as allowed by Title IX and outlined in the Objection.

9 The distributions presently proposed in the settlement are as follows:

- |    |   |   |                        |
|----|---|---|------------------------|
| 10 | • | <b>BNIL</b>                                 | <b>\$1.815 billion</b> |
| 11 | • | Video Game NIL                              | \$71.5 million         |
| 12 | • | Lost NIL Opportunities                      | \$89.5 million         |
| 13 | • | <b>Athletic Services Compensation (ASC)</b> | <b>\$600 million</b>   |

14 Assuming these sources were properly identified, \$2.415 billion of these funds  
 15 would have been subject to an equitable distribution absent restrictive NCAA rules. Under  
 16 both current and then-existing federal law, these monies could *not* have been paid out by  
 17 market distribution criteria as called for by Dr. Rascher. Therefore, NCAA restrictive  
 18 practices did not cause the disproportionate damages proposed by Dr. Rascher.

19 Applying Title IX, Dr. Rascher would have needed to calculate damages  
 20 proportionate to the men and women participating in college sports. In 2022, for example,  
 21 women were 47 percent of NCAA athletes in Division I. Any payments to student-athletes  
 22 for their athletic contributions by their universities (or conferences) would have required  
 23 approximately 47 percent of such payments to go to women, with the specific breakdown  
 24 being governed by the gender ratio on a school-by-school basis. Instead, according to the  
 25 commercial "market value" criteria applied incorrectly by Dr. Rascher, approximately 90  
 26 percent of BNIL and ASC monies is being paid to football and male basketball players.

27 Absent NCAA restrictive practices, during 2016-17 through 2023-24, rather than

1 male athletes receiving \$2.174 billion (90 percent of \$2.415 billion) and women receiving  
2 \$121 million (5 percent of \$2.415 billion), men would have received \$1.28 billion (53  
3 percent of \$2.174 billion) and women \$1.14 billion (47 percent of \$2.174 billion).<sup>1</sup>

4 A second conceptual flaw in Dr. Rascher's analysis is that the settlement fund  
5 in his largest category of BNIL bears little resemblance to reality or to the underlying  
6 professional model that he uses to establish his estimates. Briefly, in pro sports the massive  
7 television contracts garnered by the big four leagues are based upon team performance and  
8 team brand. To the extent that pro athlete publicity or NIL rights are involved, they are  
9 diminutive and basically occur in the form of video clips to promote forthcoming telecasts.  
10 The television network signs long-term deals with the leagues and teams, not even knowing  
11 the composition of their rosters for many of the covered years. The same pattern of multi-  
12 year contracting applies to the sale of telecasting rights by NCAA conferences to the  
13 networks, again with little knowledge of the underlying team rosters. The value of these  
14 contracts is based on the school's performance, its following, its spirit, its brand, the  
15 school's investment in coaches and facilities, the population of sports bettors, and so on.  
16 The value of the athletes' name, image and likeness shrinks in comparison to these basic  
17 factors. The vast majority of fans do not watch the games to see the face of the quarterback  
18 or his name on the back of his jersey. They tune in to watch the competition and root for  
19 their team.<sup>2</sup>

20 Thus, the Dr. Rascher's estimate is based on a false analogy. The plaintiffs have  
21 invented a term and acronym, BNIL, that has little basis in economic reality.

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22 <sup>1</sup> The Rascher analysis leaves undefined how the remaining 5 percent of settlement funds  
23 would be distributed among subdivision, sports and men and women.

24 <sup>2</sup> To be sure, plaintiff's expert Ed Dresser acknowledged that "there have been no prior  
25 instances in which BNIL has been negotiated or valued separately from other components of  
26 broadcast agreements" either at the collegiate or professional level. *Order Granting Motion*  
27 *for Certification of Damages Classes*, November 3, 2023, at 11.

1 I declare under penalty of perjury under the laws of the United States of America that the  
2 foregoing is true and correct based on information known to me.

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4  
5 /s/ Andrew Zimbalist

6 Andrew Zimbalist

7 January 30, 2025  
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